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OGC Has Reviewed

28 June 1955

MEMORANDUM FOR: Deputy Chief, Payroll and Travel Branch
Finance Division

SUBJECT : Post Differential Claim - 25X1A9A

REFERENCE : (a) Memorandum for General Counsel from Deputy Chief, Payroll and Travel Branch, same subject, dated 12 May 1955

(b) Memorandum for General Counsel from Chief, FE/2, same subject, dated 9 June 1955

1. Reference (a) requests the opinion of this office as to whether the subject individual can be paid a post differential for the period 19 October 1953 through 19 December 1953 during which time he was on temporary duty in the Far East.

2. Specifically, the facts stated in the reference memoranda are that subject was authorized to travel from Washington to [] on a 30-day TDY and return to Washington. Amendment No. 1 to this travel order extended the TDY for 30 days. Amendment No. 2 further extended the TDY by an additional 15 days. By amendment No. 3, the original travel order and amendments No. 1 and 2 were amended to add to the itinerary: [] and []. He arrived at [] on 19 October 1953 and departed from there on 19 December 1953. During this 60-day period, he made four trips away from [], two of which involve travel for short periods to [], both of which are "zero" posts for differential purposes. All of these trips were made under the authority of the Chief of Mission or Station.

3. Before turning to your specific questions in regard to this claim, I believe that a little background regarding the general problem of granting post differentials to personnel detailed to a differential post or area might be of assistance to you in processing future cases. This general problem was discussed with the Chief, Post Differential Section, Allowances Branch, of the State Department. Since this Agency has by its regulations provided that foreign post differentials will be paid in accordance with regulations issued by the Department of State, it is worthwhile to pay heed to State's "raison d'être" for a section and their interpretation thereof.

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4. Section 443 of the Foreign Service Act of 1946 (22 U.S.C. 888) is the basic statutory authority for paying foreign post differentials. Executive Order 10,000 dated 16 September 1948, as amended by Executive Order 10,261, dated 27 June 1951, delegates to the Secretary of State authority to prescribe regulations to implement this statute. The original detail regulations promulgated by the Department under this authority were "gutted" by a decision of the Comptroller General (B-106469, 19 December 1951). As a result of this decision there was heavy pressure within the State Department, and, particularly from the State Department legal adviser, to discontinue paying post differential to all details. The "pro-detailists" won out, however, but the resulting regulation is technical, requires literal compliance and leaves niches into which certain factual situations will fall and the individual involved will not receive a differential even though considerations of "equity" and "common sense" might dictate to the contrary. For example, only the fact of "how" the travel orders are written determines whether the subject would receive a post differential or would be considered in "Round-Trip Official Travel to Several Posts" under Case VIII of Section 153 of the Standardized Regulations.

5. The State Department representative advised us that they have conducted a continuous education program in the Department with the objective of assuring that proposed "detail" situations are carefully thought out and documented in advance. Only in this manner can situations be avoided in which a detail is denied a post differential because the technical requirements of the regulation have not been met. In this regard we were advised that travel orders written by the State Department for personnel assigned on detail state, if such is the intent, that the contemplated duration of the temporary assignment is for a substantial period estimated at not less than 60 days. As you know, proposed Agency Notice is designed to provide a procedure whereby this Agency will likewise document its intentions in advance.

6. Your specific questions with regard to the subject's claim are quoted and answered in the order submitted.

Question: A. It appears that the original intent of the travel order was thirty days at but was later amended to include various other points and extend the period of time to 75 days. Will amendments numbers one and two be considered as a part of the appropriate personnel documentation required by paragraph 115g(1) of the Department of State, Standardized Regulations (Government Civilians, Foreign Areas)?

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Answer:

Yes. We are advised that amendments to original travel orders are considered by the Department of State to constitute the determination "by appropriate personnel documentation that the contemplated duration of the temporary assignment or temporary duty is for a substantial period of time estimated at not less than 60 calendar days" required by Section 115g (1) of the Standardized Regulations. No General Accounting Office exception on this point has been taken. Moreover, we are advised that in drafting the regulation the word "predetermined" in the cited section was considered and rejected.

Question: B. In view of a recent decision from your office the terms "post" and "area" are used somewhat synonymously. Would the term "area" be held to include only the

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[redacted] in their entirety or would the term be extended to include the entire Far Eastern Area of which [redacted] would be a part?

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Answer:

No. The terms "post" and "area" are synonymous only to the extent that unless the terms are distinguished by context, a provision of the differential section of the Standardized Regulations referring to a "post" also means "area" when only the first term is used. For example, Section 141 states in part "Payment shall begin as of the date of arrival at the post ..." In this context "post" also means "area" if the assignment is to an "area" rather than to a "post". However, the terms have distinctive meanings. Section 115 (1) defines "differential post" and "differential area" to "mean a post or area so designated by Secretary of State and classified in column 6, Differential Rate, of the table which constitutes section 920". In section 911, the section which explains the tables of section 920, subparagraph (b) (2), referring to differentials states:

"In column (1) of section 920 will be found the names of certain countries (as Colombia), or areas within countries (as Guanacaste Province, Costa Rica), or dependencies of countries (as Belgian Congo), followed, in the space ordinarily used for the several allowance classifications, by the words: 'Differential, unlisted posts or areas' or 'Differential, area-wide.' This type of listing is for the purpose of showing the differential payable to eligible personnel assigned or detailed to localities in these countries or areas not classified for differentials elsewhere in the list. If the name of the post does not appear on the list, there may be a country or area classification."

In other words, for the purpose of these regulations an "area" is a geographic entity, other than a "post", to which a differential rate has been assigned.

Question: C. In view of the phrase "from his permanent station" in line two of Department of State, Standardized Regulations (Government Civilian, Foreign Areas), paragraph 115g (2), can this regulation apply when an individual is away from his "on detail" point on temporary duty. In the case at hand subject performed duty in the [redacted] proper for less than sixty days but was away from his permanent station in excess of sixty days.

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Answer: Yes. Footnote 1 to section 144.2 of the Standardized Regulations states:

"Where an employee is issued round-trip orders for travel from and to a post of detail, rather than a post of assignment, the same principle will prevail, i.e., the post of detail where the travel begins and ceases will be construed as the post of assignment in applying sections 142.2, 142.3, or 144.2, whichever is pertinent, and the definitions in section 115g."

In other words, when round-trip travel from the post of detail is authorized, the post of detail becomes the post of assignment. The memorandum cited in reference (b) above indicates this to be the factual circumstances of the subject's case. The Chief of [redacted] or Chief of Station authorized round-trip travel for the subject from [redacted] to the other posts visited. Since the subject was not away from his post of initial detail more than fourteen consecutive calendar days the post differential for the post of initial detail would continue to be applicable while away from that post on temporary duty.

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Question: D. May the attached claim be certified for payment?

Answer: Yes, if the travel orders document the factual situation to be that stated in the memorandum cited in reference (b) of this document, and if the claim is otherwise correct.

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[redacted]
Office of General Counsel

cc: FE
FO/Contract Pers. Div.

Distribution:
✓ Subject
Signer
Clayton.